IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.02.2007

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.No.41914 of 2006

The Secretary,
Nadar Committee Higher Secondary School,
Ramanathapuram,
Tirunelveli District.
... Petitioner

Vs.

1. The Director of
School Education,
(Higher Secondary)
College Road,
Chennai-6.

2. The Chief Educational officer,
Tirunelveli-9.

3. A.Marimuthu
... Respondents

PRAYER: This writ petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorari, calling for the records relating to the proceedings of the 1st respondent dated 27.01.2006 made in Mu.Mu.No.43880/W7/04 quash the same and direct the 2nd respondent to accord approval to the decision of the petitioner to permit the 3rd respondent to continue in service as PG Assistant without backwages and with continuity of service.

For Petitioner : Mr.R.N.Amarnath
For Respondents R1 & R2 : Mr.D.Srinivasan G.A,
For Respondent R3 : Mr.V.Gangadaran

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O R D E R

The writ petition is directed against the orders of the first respondent the Director of School Education dated 27.01.2006 by which the first respondent has rejected the request of the petitioner management to permit the third respondent teacher to continue as Post Graduate Assistant with back-wages and continuity of services and also for a direction against the second respondent

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to accord such approval to the decision of the third respondent stated above.

2. The facts leading to this case is that the petitioner school is a private school recognized under the Tamil Nadu Recognized Private Schools (Regulation) Act, and rules made there under. The third respondent, who was appointed as a Post Graduate Assistant under the petitioner management, has committed some irregularities, based on which a charge memo issued to him and after the enquiry conducted by the school committee, it was decided to dismiss the third respondent from service. The charge against the third respondent was that he misbehaved with girl students and other charges. After the petitioner took decision to dismiss the third respondent from service, the petitioner sought approval of the second respondent for such decision as it is required under the Tamil Nadu Recognized Private Schools (Regulation) Act. That was the petition filing on 01.11.1993. However, the second respondent has refused to grant approval by the order, dated 29.11.1993. It was against the said refusal, the petitioner has filed appeal before the first respondent and the first respondent has dismissed the appeal of the petitioner management on 05.04.1994. It was against the said order of dismissal by the first respondent, the petitioner filed writ petition in W.P.No.8362 of 1994, which was also dismissed by this Court by an order dated 29.02.1998 and on a further appeal filed by the petitioner in W.A.No.433 of 1998, by an order dated 04.03.2004 the Hon'ble Division Bench while allowing the appeal filed by the petitioner management, has directed the second respondent Chief Educational Officer to accord approval for the decision of the petitioner management to dismiss the petitioner from service.

3. In the mean time, on representation from the third respondent to the petitioner tendering apology for the past misconduct and requesting for reinstatement dated 05.12.2004, the school committee of the petitioner has passed a resolution on 25.12.2005, resolving to allow the third respondent to continue in the school without back-wages. It is this proposal of the petitioner school committee, which was rejected by the first respondent on 27.01.2006 under the impugned order.

4. The writ petition is filed on the ground that it is for the second respondent to decide the issue and the first has no jurisdiction. That by virtue of the impugned order of the first respondent the petitioner management has lost the right of appeal and also on the ground that the view of the first respondent in the impugned order that when once the school committee of the petitioner management decided to dismiss the third respondent, it has no jurisdiction to allow the third respondent to continue in

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service without back-wages is not correct. It is also the contention of the petitioner management that the order of the first respondent amounted to interference with the jurisdiction and powers of the petitioner in respect of appointment and inflicting of punishments.

5. On the other hand, the second respondent has filed a counter affidavit. While admitting the factual position as stated in the affidavit filed by the petitioner in support of the writ petition, the second respondent would submit that after the judgement of the Division Bench of this Court in directing the second respondent to grant approval for the dismissal of the service of the third respondent, the petitioner has sent a proposal dated 07.02.2005, stating that the school committee has decided to withdraw its earlier request for permission to dismiss the third respondent and allow him to continue by reinstating into service. Since that proposal of the petitioner management dated 07.02.2005 was against the direction of the Hon'ble Division Bench in W.A.No.433 of 1998, the second respondent sought clarification from the first respondent and the first respondent in the impugned order has directed that the said proposal to reinstate the third respondent, is not acceptable, since it is against the order of the Division Bench. While it is true that the Chief Education Officer is the competent authority in respect of Post Graduate Teachers to grant approval for the proposal for dismissal as per the Tamil Nadu Recognized Private Schools (Regulation) Act, the second respondent would state that as per the provision of the said act, a teacher cannot be placed under suspension for a period of more than 4 months and in such circumstances, the third respondent has not made any appeal against that order and he kept silent for more than 11 years and there is no provision under the Tamil Nadu Recognized Private Schools (Regulation) Act, to represent to the school committee to take him back after 11 years and school committee has no power to reappoint the petitioner after 11 years. There is a violation of Section 22(3) of the Tamil Nadu Recognized Private Schools (Regulation) Act. Therefore, according to the second respondent the resolution of the school committee dated 25.12.2004 to reinstate the petitioner into service from 03.01.2005 and treat the break in service from 30.07.2003 to 02.01.2005 as leave on loss of pay is not in accordance with the Tamil Nadu Recognized Private Schools (Regulation) Act.

6. It is also the case of the second respondent that as against the order of the first respondent, the petitioner has made a representation to the Government on 08.03.2006 and the same is under consideration of the Government, which has called for certain remarks and records. It is also the case of the second respondent that the second respondent is the authority to accord permission to

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dismiss the Post Graduate Teacher and not the authority to permit the petitioner to reinstate. It is also the case of the second respondent that the second respondent is under obligation by the decision of the Hon'ble Division Bench to accord approval of the dismissal of the third respondent and therefore, the second respondent cannot grant any permission for reinstating the third respondent which will be against the order of the Division Bench.

7. Mr.R.N.Amarnath, learned counsel appearing for the petitioner would submit that the petitioner management being a private school as per the provisions of the Act, through its school committee is empowered to make appointment or to take disciplinary actions against any teachers. As far as the appointments made by its school committee within the sanctioned strength created by the Educational Authorities, there is no approval required except in cases where the qualifications of the persons appointed are under dispute, in which case affected parties have a right of appeal to the Educational Authorities and also a formal information for the purpose of release of teaching grants. It is only in respect of dismissal or removal or termination or otherwise termination from service which requires a prior approval from the competent authority. While it is true that earlier the petitioner management has sent a proposal for dismissing the third respondent seeking the approval from the second respondent, the second respondent on merit has come to a conclusion that charges against the third respondent were not proved. It is also his contention that even after the Hon'ble Division Bench has passed order allowing the appeal filed by the management and directing the second respondent to grant approval for dismissal of the third respondent by the order dated 04.03.2004, the second respondent has not chosen to pass any such order of approval till date. In such circumstances, being the appointing authority it is certainly open to the petitioner to vary its earlier decision under a changed circumstance and that cannot be prevented by the order of the first respondent. He would also submit that at the most the first respondent can say that during the period of decision taken by the management to dismiss the third respondent, the grant will not be released on the basis of no work no pay.

8. The third respondent has also filed a counter affidavit. While admitting all the factual position, the third respondent would submit that there was a compromise under which the school committee of the petitioner and the third respondent have agreed for certain terms. One such term is that the third respondent has agreed not to file any appeal before the Supreme Court of India against the judgement of the Division Bench and the third respondent should tender a letter of apology undertaking to act properly in future and also the third respondent has to forego all

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his allowances. The third respondent is having two daughters and he is not having any property and in those circumstances, by taking a lenient view, the first respondent school committee has taken a decision and by an order dated 27.12.2004, the third respondent was reinstated and he also joined from 03.01.2005 and working without salary for the past 24 months.

9. On the other hand, the learned Government Advocate, who has appeared for the first and second respondents would submit that inasmuch as the Hon'ble Division Bench judgement is clear, the Educational Authority cannot decide anything contrary to the same.

10. Mr.V.Gangadaran, learned counsel appearing for the third respondent also would adopt the argument of the learned counsel appearing for the petitioner.

11. I have heard the learned counsel for the petitioner as well as the learned counsel for respondents and perused the entire records.

12. While facts in this case are not in dispute, it is relevant to point out that the petitioner management is the Educational agency of an aided school, which is governed by the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act. It is also not in dispute that the petitioner management has constituted a school committee as per the requirement of Rule 12 of the Tamil Nadu Recognized Private Schools (Regulation) Rules. The school committee under the Tamil Nadu Recognized Private Schools (Regulation) Act 1973, is entrusted with the functions under Section 18 of the said Act, which runs as follows:

> "18. Functions of the school committee and responsibility of educational agency under the Act.-
> (1) Subject to the provisions of this Act and the rules made thereunder, the school committee shall have the following functions, namely -
> (a) to carry on the general administration of the private school excluding the properties and funds of the private school;
> (b) to appoint teachers and other employees of the private school, fix their pay and allowances and define and the conditions of their service; and
> (c) to take disciplinary action against teachers and other employees of the private school.
> (2) The educational agency shall be bound by anything done by the school committee in the discharge of the functions of the committee under this Act.
> (3) For the purposes of this Act, any decision or

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action taken by the school committee in respect of any matter over which the school committee has jurisdiction shall be deemed to be the decision or action taken by the educational agency."

13. Therefore, one of the functions of the school committee is to appoint teachers and other employees of private schools fix their pay and allowances and define their duties and the conditions of their services, apart from taking disciplinary action against teachers.

14. In respect of suspension of the teachers employed in the aided private school Section 22(3) states that a teacher or a person employed in a private school can be placed under suspension for a period of 2 months, which can be extended by another period of 2 months by the competent authority and such suspension can be only in respect of pendency of enquiry into grave misconduct within the meaning of the code of conduct prescribed under Section 21(1) of the Act. Section 22(3) runs as follows:

"21. Teachers and other persons employed in private schools to be governed by Code of Conduct.- (1) Every teacher and every other persons employed in any private school shall be governed by such Code of Conduct as may be prescribed and if any teacher or other person so employed violates any provision of such Code of Conduct, he shall be liable to such disciplinary action as may be prescribed."

15. Therefore, a reading of the Section 22(3) clearly contemplates that when once a teacher or a person employed in a private school is placed under suspension, the suspension is only for a period of 2 months and within 2 months if the enquiry is not completed such teacher or a person employed shall be deemed to have been restored without prejudice to the enquiry, however, with a proviso that the period can be extended for another 2 months. Therefore, it is clear that in any event, after the expiry of 4 months from the date of suspension, such teacher or any other person employed in a private school is deemed to have been reinstated. Then, for the purpose of dismissal or removal or termination or otherwise of any teacher or person employed in a private school after the enquiry, Section 22(1) states that such termination cannot be done except with the prior approval of the competent authority. The said section runs as follows:

"22. Dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private schools.- (1) Subject to any rule that may be made in this behalf, no teacher or other person employed in any private school shall be dismissed, removed, or

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reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority."

16. It is also relevant to point out that Section 22(2) which runs as follows:

"(2) Where the proposal to dismiss, remove or reduce in rank or otherwise terminate the appointment of any teacher or other person employed in any private school is communicated to the competent authority, that authority shall, if it is satisfied that there are adequate and reasonable grounds for such proposal, approve such dismissal, removal, reduction in rank or termination of appointment."

Contemplates that when such proposal is sent to the competent authority, it is the duty of that authority if it is satisfied that there are adequate reasons and grounds to approve such dismissal. In the present case, when a proposal for dismissal of the third respondent was sent by the petitioner on 01.11.1993, by virtue of the powers under Section 22(2) of the Act, the second respondent being admittedly the competent authority has refused to grant permission or prior approval for the dismissal of the third respondent.

17. It is true that thereafter an appeal was filed by the first respondent and the writ petition was filed before this Court and ultimately the writ appeal filed by the management came to be allowed with a direction to the second respondent to grant approval for the proposal of the petitioner management dated 01.11.1993 to dismiss the third respondent. That was the order passed by the Hon'ble Division Bench on 04.03.2004. Various issues were involved in these proceedings including the validity or otherwise of the constitution of the school committee etc., and ultimately the Hon'ble Division Bench in the decision rendered on 04.03.2004 while dealing extensively with the powers of the school committee to delegate its powers to the subcommittee for the purpose of conducting enquiry etc., and arriving at a conclusion that such enquiry is permissible and also having arrived at a conclusion that the school committee of the petitioner management has validly constituted, but considering that the charges framed against the third respondent are very serious in nature and Section 22 only contemplates a prima facie satisfaction on the part of the second respondent whether the approval to be granted or not and not on factual merits, has set aside the order of the second respondent dated 29.11.1993 refusing to grant prior approval for dismissal of the third respondent and directed the second respondent to accord approval in view of the findings given by the Division Bench. The

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operative portion of the judgement of the Hon'ble Division Bench is as follows:

> "9. The materials placed before us show that the allegations against the third respondent are very serious and grave in nature, as he has misbehaved with the girl students who were studying in the school. In view of the report submitted by the Sub Committee, which was accepted by the School Committee, the Committee sought for prior approval from the second respondent, in terms of Section 22 of the Act. The second respondent went into the facts by considering the entire materials, though he had no powers or jurisdiction to act as an appellate authority, and gave his findings thereon which are not contemplated either under the Act or under the Rules, since Section 22 contemplates only prima facie satisfaction to find out whether approval can be granted or not for the punishment proposed by the School Committee on the third respondent. Though the second respondent went into the factual aspects and ultimately refused to grant approval, the appellate authority, before whom the appeal was preferred by the appellant against the orders of the second respondent, did not consider the factual aspects, but disposed of the appeal by simply stating that the committee did not have proper quorum and that the Sub Committee cannot enquire into the allegations. Since we have already held that the second respondent, as Chief Educational Officer, has no powers to consider the factual merits, we cannot, but, set aside the order dated 29.11.1993, as it was passed on merits. Accordingly, we set aside the orders of the first and second respondents as well as the order of the learned single judge. The writ appeal is allowed with a direction to the second respondent, the Chief Educational Officer to accord approval in view of the above findings."

18. It is admitted that in spite of the said positive order given by the Hon'ble Division Bench as early as on 04.03.2004 clearly holding that it is not for the respondent to got into the substantive material but only prima facie proof and therefore, it was the duty on the part of the second respondent to grant approval for the proposal of the petitioner to terminate the services of the third respondent, admittedly, the second respondent has not acted as per the direction of the Hon'ble Division Bench even as on today and no approval has been given for the proposal of the petitioner management dated 01.11.1993 for termination of the third respondent.

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19. In such circumstances, by virtue of the operation of law, namely, by Section 22(1) of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1974, there is every reason to believe that there is no order of termination against the third respondent in existence. It is relevant to point out that even from the date of suspension after 4 months there is an automatic reinstatement by virtue of Section 22(3)(b) of the Act. Therefore, on the factual situation that even as on today, the second respondent, who is admittedly an authority competent to grant prior approval for the proposal of the petitioner management to dismiss the services of the third respondent has not granted such prior approval, the decision of the petitioner management of the year 1993 can only be at the most treated as nonest and such decision for termination is not operative in the eye of law by virtue of the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1974.

20. It is in this background of this case, the question arises as to whether the petitioner management is not entitled to reconsider its earlier decision to employe the third respondent or otherwise if the petitioner management being the appointing authority given power through its school committee by virtue of Section 18(1)(b) of the Act, to appoint any person decides to appoint the third respondent, can any one of the respondent or this Court for that matter decide that the petitioner management has no such powers?

21. A reading of the entire Act shows that the powers of appointment and taking disciplinary action vest with the school committee. No where the provision of the Act contemplates that for appointing a teacher by the school committee an approval is required except stating that the qualification are to be mandatorily followed and the appointments are to be made subject to the maximum strength as per the Government Order passed from time to time based on the student teacher ratio, which is a matter of policy. That power is available to the Government and the Educational Authorities on the ground that it is the government, which is releasing 100% teaching grants for the teachers.

22. On the other hand, the Act provides for prior approval only for termination of teachers and others employed, which is intended only to protect the teachers and other employees in the aided private schools from the conduct of the managements, in affecting the service conditions of such teachers and persons employed in the private management. Therefore, the power of management to make appointment can be restricted only on the ground that the person appointed is not having necessary qualification, which is required as per the Act or in cases where the appointment sought to be made is against the sanctioned strength of the school

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as approved by the Government from time to time, based on the student teacher ratio and also the strength of students, which has to be assessed periodically by virtue of the Government Order, which are passed from time to time.

23. On the facts of this case no one of the said conditions are involved, since it is not even the case of the respondents 1 and 2 that the third respondent is not qualified or the appointment is made by the petitioner's school beyond the sanctioned strength. The reason given in the impugned order by the first respondent is that when the Hon'ble Division Bench of this Court has directed the second respondent to grant approval for the dismissal of the third respondent, contrary to that no approval can be granted for the purpose of permitting the third respondent to continue. As I have stated earlier, inasmuch as the second respondent has failed to act as per the directions of the Hon'ble Division Bench, that cannot be a ground for the purpose of obstructing the right of the petitioner management from reconsidering its earlier decision.

24. On the other hand, if after the second respondent granted prior approval for dismissal of the third respondent and in spite of that the management wanted to reinstate the third respondent into service, the enabling provisions are available under the Tamil Nadu Recognized Private Schools (Regulation) Act, 1974 for the Government and educational authorities for withdrawal of recognition, apart from many other remedial measures, since such conduct may amount to disobedience to the directions of the authorities for which there are adequate provisions under the Tamil Nadu Recognized Private Schools (Regulation) Act, 1974 by treating as mismanagement etc. But in my considered view that cannot be a ground to prevent any action by the petitioner management to reemploy the third respondent. This I am emboldened to state purely due to the reason of the failure on the part of the second respondent in not acting as per the directions of the Hon'ble Division Bench. If only the second respondent has quickly acted as per the direction of the Hon'ble Division Bench, since certainly the charges framed against the third respondent are very serious in nature, this nebulous situation would not have arisen and there would not have been an occasion for a compromise between the petitioner and the third respondent, since no such compromise and agreement can act against the statutory compulsions.

25. It is the case of the petitioner management that considering the plight of the third respondent, who is stated to have two female children and also his age, namely, 52 years and he is stated to have given an undertaking to behave properly, apart from giving undertaking that he will not claim salary for the period from the date of dismissal by the petitioner management till

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the date of decision to appoint the third respondent the decision of reinstate him was stated to have been taken. It is also seen that the petitioner by the appointment order dated 27.12.2004 given to the third respondent through its school committee meeting held on 25.12.2004 has decided to appoint the third respondent only on compassionate ground from 03.01.2005 subject to the approval of appointment of the third respondent by the Educational Authorities. When such proposal was sent by the petitioner management on 07.02.2005, the first respondent has chosen to pass the impugned order, mainly on the ground that granting of such approval will be against the decision of the Division Bench. As I have stated earlier the Hon'ble Division Bench having found that the earlier decision of the school management, namely, the petitioner in deciding to terminate the services of the third respondent is valid, has directed the second respondent, who is the competent authority to grant approval and such approval has not been granted so far and in such circumstances as per the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1974, there is deemed to be no termination order.

26. In view of the same, the reason given by the first respondent and the impugned order is not sustainable and the impugned order is quashed. The writ petition stands allowed with a direction to the second respondent to pass orders on the proposal of the petitioner management dated 07.02.2005 treating it as a fresh appointment of the third respondent in the petitioner school and decide the issue in accordance with law making it clear that it is for the second respondent to decide about the claim of the petitioner regarding continuity of service to be granted to third respondent. Considering the circumstance that the third respondent has accepted to forego the salary for the period from the date of proposal for termination made by the petitioner earlier till the date of reappointment and such order shall be passed by the first and second respondents on the facts and circumstances of the case within a period of 8 weeks from the date of receipt of a copy of this order. No Costs. Consequently, the connected M.Ps. are closed.

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Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

nbj

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To

1. The Director of
School Education,
(Higher Secondary)
College Road,
Chennai-6.

2. The Chief Educational officer,
Tirunelveli-9.

1 cc to the Government Pleader, Sr. 8335

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